

ORIGINAL

FILED

June 14 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

J. Robert Planalp  
LANDOE, BROWN, PLANALP,  
& REIDA, P.C.  
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Attorney for Appellants  
S.M. Lalani, Carol Lalani and  
Luz E. Rodriguez

FILED

JUN 14 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

\* \* \* \* \*

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 10-0286

\* \* \* \* \*

S.M. LALANI and CAROL LALANI, )  
 )  
Plaintiffs/Appellants, )  
 )  
vs. )  
GRANDVIEW HEIGHTS, INC., GEORGE E. )  
COOK, ALICE M. COOK, JOHN MAE LANE )  
HOMEOWNERS ASSOCIATION, NORTH RIDGE )  
RANCH HOMEOWNERS ASSOCIATION, )  
SADDLE RIDGE ESTATES, a Montana )  
Limited Partnership, MICHAEL S. )  
HUEMPFNER, CYNTHIA HUEMPFNER, )  
ROBERT UHLMANN, SALLY UHLMANN, )  
W.B. FREEBURG TRUSTEE of the BRAD )  
FREEBURG FAMILY LIVING TRUST, MARK )  
D. JOHNSON, LAURIE J. JOHNSON, )  
CONNIE J. KIRKLAND, KRIS A. )  
KIRKLAND, MICHAEL A. LAYMAN, )  
FAITH L. QUIGLEY, ALAN R. KAHN, )  
JEAN G. KAHN, RAYMOND D. STROTHER, )

NOTICE OF APPEAL

SANDRA P. STROTHER, LOUIS R. SPAIN, )  
CHARLINE R. SPAIN, DAVID M. MADDEN, )  
DELORES A. MADDEN, JOHN )  
MORNINGSTAR, LESLIE MORNINGSTAR, )  
ARTHUR M. BARBICHE, MARY K. )  
BARBICHE, PETER J. RIEKE, SALLY )  
RIEKE MAISON, MARTHA SMITH COLLETT, )  
STEWART W. ROBINSON, MARVIN D. )  
MORGENSTEIN, ANN VAN BALEN, )  
KENNETH LeCLAIR, RICHARD J. )  
SCHONBERGER, NANCY L. SCHONBERGER, )  
GENE COOK, and JOHN DOES 1, 2, 3, )  
and 4, )

Defendants/Appellees, )

and )

SADDLE RIDGE HOMEOWNERS )  
ASSOCIATION, INC., )

Cross-Claim Defendants. )

and )

MICHAEL S. and CYNTHIA HUEMPFNER, )  
ROBERT and SALLY UHLMANN, STUART )  
TILT, CONNIE J. and KRIS A. )  
KIRKLAND, DAVID M. and DELORES A. )  
MADDEN, ALAN R. and JEAN G. KAHN, )  
and W.B. FREEBURG TRUSTEE of the )  
BRAD FREEBURG FAMILY LIVING TRUST, )  
RAYMOND D. and SANDRA P. STROTHER, )  
MARK D. and LAURIE J. JOHNSON, )  
LOUIS R. and CHARLINE R. SPAIN, )  
(North Ridge Lot Owners), )

ARTHUR M. BARBICHE, MARY K. )  
BARBICHE, PETER J. RIEKE, SALLY )  
RIEKE MAISON, MARTHA SMITH COLLETT, )  
STEWART W. ROBINSON, MARVIN D. )  
MORGENSTEIN, ANN VAN BALEN, )

(John May Lane Lot Owners), )  
 )  
 Third Party Plaintiffs, )  
 )  
 vs. )  
 )  
 MARY S. McGEE, DAVID M. and )  
 KODY L. LYONS, THOMAS R. and )  
 LESLIE PETERSON, OP CENTER )  
 ENTERPRISES, LLC, ROGER N. FLAIR, )  
 ORVILLE HUNGERFORD MANN, III, and )  
 TERESA PATTON MANN, RICHARD )  
 BELGRAD, M.D., and CAROLYN POWERS )  
 BELGRAD, DANIEL R. and NANCY N. )  
 JOCHEM, DONALD and CYNTHIA Z. )  
 DEBETHIZY, MICHAEL E. and REBECCA )  
 L. NICKLIN, DAVID M. and SERENE O. )  
 KLUMPAR, DANIEL M. and PAMELA J. )  
 GANNON, STEPHEN R. STITH and )  
 GEORGIA M. STITH as Trustee for )  
 the STEPHEN R. STITH and GEORGIA )  
 M. STITH FAMILY TRUST, KEITH E. )  
 and DEBORAH L. DUNEMAN, LUZ E. )  
 RODRIGUEZ (Appellant), DUNCAN T. )  
 PATTEN as Trustee of the DUNCAN T. )  
 PATTEN REVOCABLE LIVING TRUST, )  
 EVA C. PATTEN as Trustee of the )  
 EVA C. PATTEN REVOCABLE LIVING )  
 TRUST, SALIM and CAROL LALANI, )  
 GENE E. COOK, KENNETH J. LeCLAIR, )  
 RICHARD J. and NANCY L. SCHONBERGER) )  
 )  
 AND ALL OTHER PERSONS OR ENTITIES, )  
 UNKNOWN, CLAIMING OR WHO MIGHT )  
 CLAIM ANY RIGHT, TITLE, ESTATE OR )  
 INTEREST IN, OR ENCUMBRANCE UPON, )  
 THE EASEMENT DESCRIBED IN THE )  
 COMPLAINT AS TO TROOPER TRAIL, OR )  
 WHO CLAIM AN INTEREST ADVERSE TO )  
 THIRD PARTY PLAINTIFFS' EASEMENT )  
 OR ANY CLOUD UPON THIRD PARTY )  
 PLAINTIFFS' EASEMENT, WHETHER SUCH )  
 CLAIM OR POSSIBLE CLAIM BE PRESENT )

OR CONTINGENT, AND ALL OTHER )  
PERSONS OR ENTITIES, KNOWN OR )  
UNKNOWN, )  
) )  
Third Party Defendants. )  
) )  
MARY S. MCGEE, DAVID M. AND KODY )  
L. LYONS, OP CENTER ENTERPRISES, )  
LLC, ROGER N. FAIR, DANIEL M. AND )  
PAMELA J. GANNON, STEPHEN R. SMITH )  
AND GEORGIA M. STITH AS TRUSTEES )  
FOR THE STEPHEN R. STITH AND )  
GEORGIA M. STITH FAMILY LIVING )  
TRUST, KEITH E. AND DEBORAH L. )  
DUNEMAN, DUNCAN T. PATTEN AS )  
TRUSTEE OF THE DUNCAN T. PATTEN )  
REVOCABLE LIVING TRUST, AND EVA )  
C. PATTEN AS TRUSTEE OF THE EVA )  
C. PATTEN REVOCABLE LIVING TRUST, )  
) )  
Third Party Cross-Claim )  
Plaintiffs, )  
) )  
v. )  
) )  
LUZ E. RODRIGUEZ, AND SALIM AND )  
CAROL LALANI, )  
) )  
Third Party Cross-Claim )  
Defendants. )  
) )

---

Notice is given that S.M. Lalani, Carol Lalani, the Appellants above named who are Plaintiffs and Luz E. Rodriguez, who is a Third Party Defendant, is also an Appellant in that cause of action filed in the Eighteenth Judicial District in and for the County of Gallatin as Cause No. DV-03-352B hereby appeals to the Supreme Court of Montana from the final judgments ordered and entered in

such action as follows:

1. Summary Judgment entered on May 17, 2010 in favor of Defendants Barbiche, Rieke, Maison, Collett, Robinson, Morgenstein and Van Balen and denying Appellants' Motion for Summary Judgment on November 13, 2009 and Order denying Motion for Reconsideration on April 6, 2010 and denying Appellants' Motion for Summary Judgment of November 13, 2009 and Order denying Reconsideration of April 6, 2010;
2. Amended Summary Judgment dated May 28, 2010 in favor of Defendants Barbiches, Rieke, Maison, Collett, Robinson, Morgenstein, Van Balen, Huempfners, Uhlmanns, Freeburg Trustee of the Brad Freeburg Family Living Trust, Johnsons, Kirklands, Tilt, Kahns, Strothers, Spains and Maddens in favor of Sourdough and denying Appellants' Motion for Summary Judgment dated November 13, 2009 and Order denying Reconsideration on April 6, 2010;
3. Partial Summary Judgment dated November 13, 2009 in favor of Defendants Barbiches, Rieke, Maison, Collett, Robinson, Morgenstein, Van Balen, Huempfnr, Uhlmanns, Tilt, Kirkland, Maddens, Kahns, Freeburg Trustee of the Brad Freeburg Family Living Trust, Strothers, Johnsons,

Spains, Leclair, Cook, Schonbergers, Saddle Ridge Estates, Cooks and Grandview Estates and denying Appellants' Motion for Summary Judgment and Order denying Reconsideration on April 6, 2010.

4. Decision and Order dated January 26, 2009 in favor of Grandview Estates, Inc., George E. Cook and Alice M. Cook and Partial Summary Judgment dated February 12, 2009 and Order denying Appellants' Motion for Reconsideration dated May 12, 2010.
5. Summary Judgment (Sourdough) dated May 28, 2010 and Order denying Appellants' Motion for Summary Judgment dated May 12, 2010.

The Appellants certify that this appeal is not subject to the mediation process required by M. R. App. P. 7.

The Appellants certify that the notice required by M. R. App. P. 27 has been or will be given, within 11 days of the date hereof, to the Supreme Court and to the Montana Attorney General with respect to a challenge to the constitutionality of any act of the Montana Legislature.

This appeal is not an appeal from an order certified as final under Rule 54(b), M.R.Civ.P.

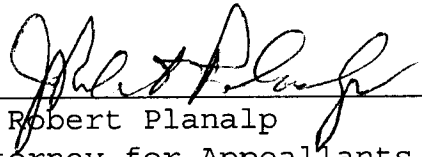
That all available transcripts of the proceedings in this

cause have been ordered from the court reporter contemporaneously with the filing of this Notice of Appeal.

Appellants certify that included herewith is the filing fee prescribed by statute.

DATED this 11 day of June, 2010.

LANDOE, BROWN, PLANALP,  
& REIDA, P.C.

By   
J. Robert Planalp  
Attorney for Appellants  
S.M. Lalani, Carol Lalani and  
Luz E. Rodriguez

#### **CERTIFICATE OF SERVICE**

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing NOTICE OF APPEAL upon the clerk of the District Court, each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, as follows:

Jennifer Brandon  
Clerk of District Court  
615 S. 16<sup>th</sup> Avenue, Room 302  
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Edward J. Guza  
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Missoula, MT 59802



Ron A. Nelson  
Church, Harris, Johnson  
& Williams, P.C.  
P.O. Box 1645  
Great Falls, MT 59403

Gregory G. Schultz  
210 E. Pine Street, Suite 200  
Missoula, MT 59802

DATED this 11 day of June, 2010

By: \_\_\_\_\_

A handwritten signature in cursive script, appearing to read "Gregory G. Schultz", written over a horizontal line.

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Landoe, Brown, Planalp,  
& Reida, P.C.  
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(406) 586-4351

ATTORNEYS FOR PLAINTIFFS

IN THE EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

S.M. LALANI and CAROL LALANI, )  
Plaintiffs, )

Cause No. DV-03-352

vs. )

GRANDVIEW HEIGHTS, INC., GEORGE E. )  
COOK, ALICE M. COOK, JOHN MAE LANE )  
HOMEOWNERS ASSOCIATION, NORTH RIDGE )  
RANCH HOMEOWNERS ASSOCIATION, )  
SADDLE RIDGE ESTATES, a Montana )  
Limited Partnership, MICHAEL S. )  
HUEMPFNER, CYNTHIA HUEMPFNER, )  
ROBERT UHLMANN, SALLY UHLMANN, )  
W.B. FREEBURG TRUSTEE of the BRAD )  
FREEBURG FAMILY LIVING TRUST, MARK )  
D. JOHNSON, LAURIE J. JOHNSON, )  
CONNIE J. KIRKLAND, KRIS A. )  
KIRKLAND, MICHAEL A. LAYMAN, )  
FAITH L. QUIGLEY, ALAN R. KAHN, )  
JEAN G. KAHN, RAYMOND D. STROTHER, )  
SANDRA P. STROTHER, LOUIS R. SPAIN, )  
CHARLINE R. SPAIN, DAVID M. MADDEN, )  
DELORES A. MADDEN, JOHN )  
MORNINGSTAR, LESLIE MORNINGSTAR, )  
ARTHUR M. BARBICHE, MARY K. )  
BARBICHE, PETER J. RIEKE, SALLY )  
RIEKE MAISON, MARTHA SMITH COLLETT, )  
STEWART W. ROBINSON, MARVIN D. )  
MORGENSTEIN, ANN VAN BALEN, )  
KENNETH LeCLAIR, RICHARD J. )

NOTICE OF TRANSCRIPTS  
DEEMED NECESSARY  
FOR APPEAL

1        SCHONBERGER, NANCY L. SCHONBERGER, )  
2        GENE COOK, and JOHN DOES 1, 2, 3, )  
3        and 4, )  
4     Defendants, )  
5     )  
6        and )  
7        SADDLE RIDGE HOMEOWNERS )  
8        ASSOCIATION, INC., )  
9     Cross-Claim Defendants. )  
10        and )  
11        MICHAEL S. and CYNTHIA HUEMPFNER, )  
12        ROBERT and SALLY UHLMANN, STUART )  
13        TILT, CONNIE J. and KRIS A. )  
14        KIRKLAND, DAVID M. and DELORES A. )  
15        MADDEN, ALAN R. and JEAN G. KAHN, )  
16        and W.B. FREEBURG TRUSTEE of the )  
17        BRAD FREEBURG FAMILY LIVING TRUST, )  
18        RAYMOND D. and SANDRA P. STROTHER, )  
19        MARK D. and LAURIE J. JOHNSON, )  
20        LOUIS R. and CHARLINE R. SPAIN, )  
21        (North Ridge Lot Owners), )  
22     )  
23     Third Party Plaintiffs, )  
24        vs. )  
25        MARY S. McGEE, DAVID M. and )  
26        KODY L. LYONS, THOMAS R. and )  
27        LESLIE PETERSON, OP CENTER )  
28        ENTERPRISES, LLC, ROGER N. FLAIR, )  
29        ORVILLE HUNGERFORD MANN, III, and )  
30        TERESA PATTON MANN, RICHARD )  
31        BELGRAD, M.D., and CAROLYN POWERS )

1 BELGRAD, DANIEL R. and NANCY N. )  
2 JOCHEM, DONALD and CYNTHIA Z. )  
3 DEBETHIZY, MICHAEL E. and REBECCA )  
4 L. NICKLIN, DAVID M. and SERENE O. )  
5 KLUMPAR, DANIEL M. and PAMELA J. )  
6 GANNON, STEPHEN R. STITH and )  
7 GEORGIA M. STITH as Trustee for )  
8 the STEPHEN R. STITH and GEORGIA )  
9 M. STITH FAMILY TRUST, KEITH E. )  
10 and DEBORAH L. DUNEMAN, LUZ E. )  
11 RODRIGUEZ, DUNCAN T. PATTEN as )  
12 Trustee of the DUNCAN T. PATTEN )  
13 REVOCABLE LIVING TRUST, EVA C. )  
14 PATTEN as Trustee of the EVA C. )  
15 PATTEN REVOCABLE LIVING TRUST, )  
16 SALIM and CAROL LALANI, GENE E. )  
17 COOK, KENNETH J. LeCLAIR, RICHARD )  
18 J. and NANCY L. SCHONBERGER, )  
19 )  
20 AND ALL OTHER PERSONS OR ENTITIES, )  
21 UNKNOWN, CLAIMING OR WHO MIGHT )  
22 CLAIM ANY RIGHT, TITLE, ESTATE OR )  
23 INTEREST IN, OR ENCUMBRANCE UPON, )  
24 THE EASEMENT DESCRIBED IN THE )  
25 COMPLAINT AS TO TROOPER TRAIL, OR )  
26 WHO CLAIM AN INTEREST ADVERSE TO )  
27 THIRD PARTY PLAINTIFFS' EASEMENT )  
28 OR ANY CLOUD UPON THIRD PARTY )  
29 PLAINTIFFS' EASEMENT, WHETHER SUCH )  
30 CLAIM OR POSSIBLE CLAIM BE PRESENT )  
31 OR CONTINGENT, AND ALL OTHER )  
32 PERSONS OR ENTITIES, KNOWN OR )  
33 UNKNOWN, )  
34 )  
35 Third Party Defendants. )  
36 )  
37 MARY S. MCGEE, DAVID M. AND KODY )  
38 L. LYONS, OP CENTER ENTERPRISES, )  
39 LLC, ROGER N. FAIR, DANIEL M. AND )  
40 PAMELA J. GANNON, STEPHEN R. SMITH )  
41 AND GEORGIA M. STITH AS TRUSTEES )  
42 FOR THE STEPHEN R. STITH AND )  
43 GEORGIA M. STITH FAMILY LIVING )  
44 TRUST, KEITH E. AND DEBORAH L. )  
45 DUNEMAN, DUNCAN T. PATTEN AS )  
46 TRUSTEE OF THE DUNCAN T. PATTEN )

1 REVOCABLE LIVING TRUST, AND EVA )  
 2 C. PATTEN AS TRUSTEE OF THE EVA )  
 3 C. PATTEN REVOCABLE LIVING TRUST, )  
 4 Third Party Cross-Claim )  
 5 Plaintiffs, )  
 6 v. )  
 7 LUZ E. RODRIGUEZ, AND SALIM AND )  
 8 CAROL LALANI, )  
 9 Third Party Cross-Claim )  
 10 Defendants. )  
 11 \_\_\_\_\_ )

12 Notice is given that S.M. Lalani, Carol Lalani and Dr. Luz E.  
 13 Rodriguez, the Appellants in the above named case, hereby determine  
 14 the following transcripts are necessary for appeal.

15 Pre-Trial Proceedings (oral argument on summary judgment  
 16 held on August 20, 2009).

17 The transcript of the above-referenced proceeding is deemed  
 18 necessary on appeal and Appellants have requested court reporter  
 19 Tami McNulty prepare such transcript in the proper format for  
 20 filing with the Supreme Court and service on Appellees.  
 21

22 It is further certified that financial arrangements were made  
 23 with the court reporter before filing this Notice.  
 24  
 25  
 26  
 27  
 28

1 DATED this 11 day of June, 2010.

2  
3 LANDOE, BROWN, PLANALP,  
4 & REIDA, P.C.

5  
6 By   
7 J. Robert Planalp

8  
9  
10 CERTIFICATE OF MAILING

11 I hereby certify that I have filed a true and accurate copy of  
12 the foregoing NOTICE OF TRANSCRIPTS DEEMED NECESSARY FOR APPEAL  
13 with the Clerk of the Montana Supreme Court and that I have served  
14 true and accurate copies of the foregoing NOTICE OF TRANSCRIPTS  
15 DEEMED NECESSARY FOR APPEAL upon the Clerk of the District Court,  
16 each attorney of record, each court reporter from whom a transcript  
17 has been ordered, and each party not represented by an attorney in  
18 the above-referenced District Court action, as follows:

19 Jennifer Brandon  
20 Clerk of District Court  
21 615 S. 16<sup>th</sup> Avenue, Room 302  
22 Bozeman, MT 59715

23 Tami McNulty  
24 Department 2 Court Reporter  
25 615 South 16<sup>th</sup> Avenue, Room 207  
26 Bozeman, MT 59715

27 James A. McLean  
28 Edward J. Guza  
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9 Leanne M. Schraudner  
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22 945 Technology Blvd., Suite 102  
23 Bozeman, MT 59718

24 Kevin Jones  
25 310 West Spruce  
26 Missoula, MT 59802

27 Ron A. Nelson  
28 Church, Harris, Johnson  
& Williams, P.C.  
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Great Falls, MT 59403

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Missoula, MT 59802

By: 